

**DRAFT MEETING MINUTES
AUGUST 1, 2005
EMPLOYMENT LAW ADVISORY COMMITTEE**

Attendees:

1. Employment Law Advisory Committee Members: Rick Anderson (Sakuma Bros.), Kris Tefft (AWB), Clif Finch (WFI), Rebecca Saldana (SEIU), and Joseph Crump (UFCW)
2. L & I Staff: Rich Ervin, Mike Ratko, Janis Kerns, Carlena Anderson, Patricia Kennish, Mary Miller, Sally Elliott, Patrick Woods, and Gary Weeks
3. Other Participants: Montie Barringer (WRA), Dan Fazio (WSFB)

Agenda Item	Discussion	Action
Opening Remarks Introductions	<p>Mike Ratko called the meeting to order. Introductions of ELAC members, L&I staff, and audience were made.</p> <p>The agenda was reviewed and ELAC advised that this meeting would be focused as is a working meeting for reviewing and prioritizing administrative policies for the rulemaking process.</p> <p>Minutes of May 18, 2005 meeting reviewed and approved. If there are any further additions or changes, let Carlena Anderson know via anca235@lni.wa.gov.</p>	<p>Meeting materials will be sent by October 5th</p>
Payroll deduction WAC	<p>Outreach efforts on the hearings for the proposed payroll deduction rules (WAC 296-126-025, 028 and 030) were discussed.</p> <p>Rick Anderson questioned how the rules were publicized. He stated that many outsiders didn't know about the hearing.</p> <p>L&I staff advised the proposed rules were posted on the L&I's website and sent out to stakeholders and persons subscribing to several L&I list services. L&I requested ELAC members to submit ideas for greater publicity.</p>	<p>L&I reviewing methods to enhance communications for proposed rules and hearings.</p>
Legislative Review and Discussion	<p>There was a long discussion on the proposed revisions to Family Care WAC 296-310 as to whether the words "bona fide" should be included in the proposed language and whether it could be inserted because bona fide is not used in chapter 49.12 RCW relating to Family Care.</p> <p><u>Patrick Woods</u> gave a report on: 1) New rules officer to be hired to manage the Employment Standard policies into rules changes and other new rules that are necessary, with a funding date of October 1, 2005.</p>	

	<p>The rules officer may be an attorney, and should have a strong background in employment law.</p> <p>Rich Ervin asked for ELAC recommended candidates and agreed to send job description to ELAC members when it is available.</p> <p>2) Rep. McCoy is holding a meeting in early September regarding the administrative remedies bill. Part of the next ELAC meeting will be reserved for discussion of this bill. The last draft of the admin remedies bill will be sent to ELAC members.</p> <p>3) ELAC updated on hearings results for the payroll deduction rule.</p> <p>4) ELAC updated regarding L&I participation in the recent Washington Farm Bureau workshops across the state.</p> <p>5) ELAC briefed regarding teen safety and minor work permit fee bill. Comments included suggestions that the department continue to improve its current system and processes; allow for automatic renewal of batch variances instead of requiring new requests every year;</p> <p><u>Director Gary Weeks</u> addressed ELAC. He stated his management style is for the department to make fact-based, evidence based timely decisions.</p> <p>Director Weeks said he wants ELAC to do tasks and give real advice, not just hear reports from staff. He advised that L&I has to make choices but he wants ELAC to help push L&I in the right direction. He wants input and advice, even if L&I doesn't always agree on the direction or advice.</p> <p>ELAC comments included that information on rules to committee members needs to be in a format more like that provided by WISHA, which includes the current rule, proposed rule, and similar federal rules. Members need more information to make decisions, i.e., history, law cites, anticipated outcomes, objective intent, practical solutions that work in a real work environment.</p> <p>A question was asked as to what issues should ELAC be focused:</p>	
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	<ul style="list-style-type: none"> • Legislative proposals, including administrative remedies; rules and policies that need more clarity, predictability, certainty, and protection from jeopardy for employers. • The Employment Standard Program is different than WISHA or Industrial Insurance. Many state and federal regulations overlap or are slightly different. Regulations and policies need to be clear enough that issues are kept out of the courts. An example was given of the August 2004 federal changes to the salary overtime exemptions and how the state did not follow the federal changes. • Need to make it clear that where there is no difference. Get rid of regulations that are duplicative. • Employers need a safe harbor where they reasonably can stand on law and policies. • Need predictability for employers then if they don't comply L&I can hit the employers hard with penalties. • Most of Employment Standard clarification is in policy not rule. These written policies need to be prioritized and placed into rule with appropriate stakeholder input. • Predictability goes both ways, and employees need the certainty also and need to be able to understand their rights so that both sides know what to expect. 	
Review of Administrative Policies:	<p>Rich Ervin gave an overview of the plan for this meeting to review the policies. ELAC had a document summarizing each of the policies with L&I's recommendation as to the priority of those that need to go into rule, and that L&I's recommendation might be different than ELAC members. Rich asked how ELAC wanted to proceed—one at a time or bucket them into according to Minimum Wage, Industrial Welfare, or Agreed Wage. We need clearly defined policies to go into rules working with the ELAC stakeholder group.</p> <p>Mr. Finch offered a 3-step approach from summary document: 1) polices with the L&I designation of rules in bold type to be in a priority group; 2) low priority—those to be added; and 3) agreed with the department just need to identify order.</p>	

	<p>After further discussion the group agreed to a 3 step process placing the policies into one of three categories: 1) no action to put into rule—keep as written or make them an FAQ, or withdraw the current policy as it isn't needed because it is too similar to the actual current WAC; 2) move into rules without prioritization – do all at one time as soon as possible 3) hold the policies for further stakeholdering by ELAC.</p> <p>Following the review, policies were prioritized into one of the 3 following groups for further development:</p> <ul style="list-style-type: none"> • First group: Policies that are sufficiently clear and where there is sufficient agreement that they should be pulled and rolled as soon as possible into rule: • ES.A.1 Minimum Wage Act Applicability • ES.A.4 Special Education Student Exemption • ES.A.5 Payment of Wages Less than Minimum Wage • ES.A.9.1, through 9.2, 9.3, 9.4, 9.5, 9.6, 9.7, and 9.8, Salary Basis for White Collar Workers including definitions, application, and exemptions (Executive, Administrative, Professional, Computer Professional, and Outside Sales plus new section to address workplace violence and harassment). • ES.A.9.1 Salary Basis. ELAC gave approval for draft language to be inserted in the WAC regarding disciplinary issues on workplace violence and sexual harassment. • ES.A.10.1 Retail Sales/Service Establishment Exception • ES.A.10.3 Examples of Retail Sales/Services Establishments • ES.C.1 Industrial Welfare Act • ES.C.4.3 Driving by Minors in Non-Agricultural Jobs • ES.C.5 Payment Interval • ES.C.8.1 Employee Wearing Apparel and Uniforms • ES.D.1 Non-agricultural record keeping requirements • ES.D.2 Agricultural record keeping requirements <p><u>Again, its for this group that ELAC said we should go forth and file a CR101;</u> The plan includes:</p>	<p>File CR-101 on the 19 administrative policies recommended to go into rules— Scheduled to be filed September 20, 2005.</p>
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	<ul style="list-style-type: none"> • Pulling the policies and rolling them into a draft rule format along with the supporting documentation (comparing the proposed rules to the current rule, federal rule, and policy being integrated); • Providing them to ELAC in sufficient time for their review with their stakeholders; • Reviewing them or as many as we have complete with ELAC for direct input at our October 26th meeting in Ellensburg; <p>Final changes made and then file the 102 and conduct hearings.</p> <p>Second group: Policies that either can remain as a policy, or FAQ or can be revoked because they are covered sufficiently in existing rule or statute.</p> <ul style="list-style-type: none"> • ES.A.2 Definition of Wage (Cover as FAQ and work in electronic pay card issues) • ES.A.6 Collective Bargaining Agreements (Probably as a FAQ) • ES.A.7 More Favorable Laws • ES.A.8.2 How to calculate overtime (Probably as a FAQ) • ES.A.10.2 FAQ for Retail Sales/Services (Leave as FAQ)..... • ES.A.11 Nurses Overtime (Leave as FAQ) • ES.C.3 Commissions, piecework, and minimum wage. • ES.C.4.1 School week and work week for minors • ES.C.4.2 Minors and blood borne pathogens (will be included in update to minor work regulations) • ES.C.7 Employee Access to Personnel File (FAQ recommended as statute is sufficient) • ES.C.8.2 FAQ regarding Wearing Apparel • ES.C.9 Variances (FAQ recommended as section 130 of the statute should be sufficient). • ES.C.10 Family Care (under update now) • ES.E.11 Family Leave (make into FAQ) <p>Revoke:</p> <ul style="list-style-type: none"> • ES.B.1* Deductions from Final Paycheck • ES.B.2* Deductions from On-Going Employment Wages <p>*After final adoption of the Payroll WAC's, ELAC will review and the policies can be revoked.</p> <ul style="list-style-type: none"> • ES.C.9 Variances. The policy is language is from WAC—ELAC felt there was no need for this policy 	
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	<p>3rd Group: These are policies where a task force approach similar to salary basis will be required. This would be the initial real first work of the new ELAC rules officer:</p> <ul style="list-style-type: none"> • ES.A.3 Minimum Hourly Wages, adults, minors, and calculations • ES.A.8.1 Overtime • ES.C.2 Hours worked • ES.C.6 Meal and Rest Periods 	
Next meeting	October 26, 2005 at the Tumwater Guest House Inn in Tumwater, WA	PLEASE NOTE CHANGE IN VENUE